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COLUMBIA, SOUTH CAROLINA

November 13, 2009

VIA ELECTRONIC FILING

The Honorable Charles Terreni
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Public Service Commission of South Carolina
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**Re: State Universal Service Support of Basic Local Service included in a
Bundled Service Offering or Contract Offering
Docket No. 2009-326-C**

Dear Mr. Terreni:

Enclosed for filing is the Surreply Testimony of Joseph Gillan on behalf of the South Carolina Cable Television Association, CompSouth, NuVox Communications, and tw telecom. By copy of this letter, we are serving all parties of record with a copy of the same.

Yours truly,

ROBINSON, MCFADDEN & MOORE, P.C.

Frank R. Ellerbe, III

FRE/lla
Enclosure

cc: Other parties of record (via email & U.S. Mail)
John J. Pringle, Jr., Esquire (via email & U.S. Mail)

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2009-326-C

IN RE:)
)
)
State Universal Service Support of Basic)
Local Service Included in a Bundled)
Service Offering or Contract Offering)
)
)
_____)

SURREPLY TESTIMONY
OF
JOSEPH GILLAN
ON BEHALF OF
SOUTH CAROLINA CABLE TELEVISION ASSOCIATION,
COMPSOUTH, TW TELECOM OF SOUTH CAROLINA LLC, AND
NUVOX COMMUNICATIONS INC.

Introduction

Q. Please state your name and business address.

A. My name is Joseph P. Gillan. My business address is Post Office Box 7498, Daytona Beach, Florida 32116.

Q. On whose behalf are you testifying?

A. I am testifying on behalf of the South Carolina Cable Television Association ("SCCTA"), Competitive Carriers of the South ("CompSouth"), tw telecom of South Carolina LLC ("tw telecom"), and NuVox Communications, Inc. ("NuVox"). I previously filed direct and reply testimony on behalf of this same group.

Q. What is the purpose of your surreply testimony?

A. The purpose of my surreply testimony is to respond to rebuttal/reply testimony filed by CenturyLink and the Office of Regulatory Staff ("ORS").¹

Q. CenturyLink claims that you are recommending a treatment for bundled services that is inconsistent with federal policy.² Is this correct?

A. No. As I explained in my reply testimony,³ the FCC has never addressed whether support should be provided to deregulated services, such as bundles in South Carolina. Consequently, there is no federal policy to be inconsistent with.

More fundamentally, however, CenturyLink goes on to claim that Section 58-9-280 of the South Carolina Code should be interpreted solely by how the FCC operates the

¹ See Rebuttal Testimony of Ann C. Prockish on behalf of CenturyLink ("*CenturyLink Rebuttal*") and Reply Testimony of Dawn M. Hipp on Behalf of the Office of Regulatory Staff ("*ORS Reply*").

² *CenturyLink Rebuttal* at 1-2.

³ See Gillan Reply, pages 10-11.

1 federal USF,⁴ even where there is no inconsistency between (non-existent) federal rules
2 and the South Carolina statute. Importantly, if the South Carolina Code required that the
3 SC USF *mirror* the federal fund, the entire USF in SC would have to be revised, as the
4 ILECs have distorted the SC USF into a perpetual-revenue fund, which is not how the
5 FCC USF operates. South Carolina law is not the same as the federal
6 Telecommunications Act that governs the FCC, and there is nothing in the South
7 Carolina statute that directs the Commission to subvert the entire South Carolina statute
8 to selectively match only certain administrative procedures of the federal fund (but not
9 others).

10 Moreover, CenturyLink concludes its discussion of the federal system with the
11 remarkable assertion that “all access lines should be eligible for state USF support.”⁵ But
12 this claim seems oblivious to the fact that the South Carolina framework has always
13 limited support to “eligible access lines.”

14 The amount of High Cost Support is determined by multiplying the
15 number of eligible lines by the per-line support available for such lines in
16 the designated support service area.⁶
17

⁴ CenturyLink introduces its discussion of the federal USF as the answer to the following question:

Q. Mr. Gillan states that Section 58-9-280 of the South Carolina Code does not support the inclusion of access lines sold as part of bundled or contract offering in the calculation of USF support. Do you agree?

Although CenturyLink recognizes that the relevant question *should be* whether subsidizing deregulated bundle and contract service offerings is consistent with State Law, it nevertheless answers the question by trying to claim that federal administrative practices (not even an FCC rule, order or statute) should apply.

⁵ *CenturyLink Rebuttal* at 2.

⁶ Order Approving Final Documents and Vacating Order No. 2001-954, Public Service Commission of South Carolina Docket No. 97-239-C, Order No. 2001-996, October 10, 2001 (“*Final USF Order*”), Exhibit B at 3. (Emphasis Added).

1 CenturyLink simply refuses to recognize that the SC USF has limits and that
2 providing support to deregulated bundles exceeds those limits.

3 **Q. CenturyLink also claims that your testimony is predicated on an assumption that**
4 **the “function of an access line” changes when it is part of a deregulated bundle.⁷ Is**
5 **this an accurate description of your testimony?**

6 A. No, not at all. What my testimony explained was that even *if the functions do not*
7 *change*, bundles are legally distinct services. This is clear from the following South
8 Carolina statute:

9 S.C. Code Ann. § 58-9-285(A)(1) “Bundled Offering” means:

10 (a) for a qualifying LEC, an offering of two or more products or
11 services to customers at a single price provided that:

12 (i) the bundled offering must be advertised and sold as a
13 bundled offering at rates, terms, or conditions that are
14 different than if the services are purchased separately from
15 the LEC's tariffed offerings;

16 CenturyLink is unabashedly trying to have its cake and eat it too (or, at least, have
17 somebody else pay for its cake). When it comes to having price deregulation, it must
18 agree that its bundles are *different* than stand-alone local service; when it comes to
19 collecting a share of the USF tax, it wants to claim they are the *same*.

20 **Q. CenturyLink goes on to claim that the South Carolina legislature has decided that**
21 **deregulated bundles qualify for a subsidy.⁸ Is this a reasonable interpretation of the**
22 **statute(s)?**

⁷ CenturyLink Rebuttal at 2.

⁸ CenturyLink Rebuttal at 3-4.

1 A. No. CenturyLink points to two statutory provisions to make the claim that the legislature
2 has prejudged this issue. First, CenturyLink cites to a provision in the section
3 deregulating bundles that says “[n]othing in this section affects the commission’s
4 jurisdiction over distributions from the USF pursuant to Section 58-9-280(E).” Second,
5 CenturyLink points to a provision in the recently enacted Customer Choice and
6 Technology Investment Act that effectively preserved this issue for the Commission to
7 consider. In this regard, CenturyLink goes beyond what even the SCTC was willing to
8 admit: The SCTC (correctly) read this same statutory provision as making sure that the
9 Commission had the *authority* to decide this issue, not that the legislature had prejudged
10 the *outcome*.⁹

11 **Q, CenturyLink also points out that the State USF does not use the price of a bundled**
12 **service offering in calculating support, suggesting that means that support must be**
13 **provided.¹⁰ Does that reasoning make sense?**

14 A. No. To the contrary, CenturyLink is agreeing with my point that State USF is not
15 structured – and should not be structured – to provide support to deregulated service
16 bundles that have no maximum allowable rate. As CenturyLink goes on to admit,
17 “competition will ensure that the end user does not overpay for service.”¹¹ This is
18 precisely one of the reasons why support is not needed; USF support is only justified to
19 ensure that the rates for basic service remain affordable. If competition is able to keep
20 rates affordable, then support is not necessary. Providing USF support for deregulated

⁹ See Direct Testimony on Keith Oliver on Behalf of the South Carolina Telephone Coalition at 5.

¹⁰ *CenturyLink Rebuttal* at 5.

¹¹ *Ibid.*

1 bundles may make CenturyLink better off, but it does not benefit end-users who have to
2 pay additional USF taxes.

3 **Q. CenturyLink now claims that it is being “forced” to price its services below cost by**
4 **competition.¹² Even if true, is that justification for support?**

5 A. No. First, if competition is so intense that CenturyLink must price below cost to remain
6 “competitive,” then that is a decision that its shareholders must bear (for that is a decision
7 that its management has made). The Commission should not use USF tax revenues to
8 enable CenturyLink to offer a competitive service below cost. This portion of
9 CenturyLink’s testimony shows just how pervasively subsidies distort thinking: The
10 company is admitting that it needs a subsidy so that it can compete with others by
11 charging below-cost prices. Consider how far that expressly anti-competitive purpose is
12 from the goal of the SC USF to keep basic local service rates affordable.

13 **Q. CenturyLink also claims that bundles are not actually deregulated. Is this**
14 **accurate?**

15 A. No (and the position is not even consistent with CenturyLink’s own testimony). As is
16 clear throughout this proceeding, the issue about “deregulation” is whether there is a
17 maximum rate, which is a statutory precondition to the calculation of support.
18 CenturyLink acknowledges that bundled service offerings are not price regulated

19 The “deregulation” to which Mr. Gillan alludes is simply a lack of
20 authority on the part of the Commission to regulate the price of the
21 bundled or contract offering.¹³
22

¹² *Ibid*, at 6.

¹³ *CenturyLink Rebuttal* at 6-7.

1 I do not understand why this statement is offered as “rebuttal” – if the
2 Commission is no longer regulating the price, then (for this purpose) the service is not
3 “regulated.”

4 **Q. CenturyLink argues that all consumers in South Carolina benefit from paying a**
5 **higher USF tax to subsidize bundles.¹⁴ Is this plausible?**

6 A. No. A consumer in Columbia *might* find it appropriate to pay a USF tax to keep the rate
7 of basic local service in Branchville lower than it might otherwise be (although I would
8 challenge CenturyLink to directly ask them), but why would a consumer in Columbia
9 find it appropriate to support a deregulated bundled offering in Branchville? What
10 possible benefit does the consumer in Columbia derive from subsidized video service in
11 Branchville? The simple answer – and the one that I suspect most Columbia residents
12 would immediately provide – is: None.

13 The issue in this proceeding is not about whether consumers in rural areas
14 maintain an affordable local exchange option, it is about whether consumers in every part
15 of the state should pay a higher (than it needs to be) USF tax so that bundles can be
16 priced lower than they should be. CenturyLink has rewritten the South Carolina statute
17 to incorporate a goal that the legislature itself has never codified in South Carolina law.
18 According to CenturyLink, the legislature decided to tax urban consumers so that
19 competitive bundles in rural markets are subsidized to make the price the same as in an
20 urban market:

21 If Mr. Gillan had his way and the Commission were to disallow state USF
22 support for access lines that are provisioned as part of a bundled or
23 contract offering, carriers would likely increase the price for those bundles

¹⁴ *Ibid*, at 9.

1 or contracts in rural areas of the state to recover the cost of providing
2 service or would cease offering bundled services altogether. These actions
3 would violate one of the principle consumer benefits of universal service,
4 which, as I previously state, is to provide comparable services between
5 urban and rural areas at comparable rates.
6

7 There is no clearer evidence that the South Carolina USF has been hijacked to
8 achieve goals that are not in the statute than the admission by CenturyLink above. The
9 South Carolina USF was never intended to subsidize deregulated services so that rural
10 ILECs could offer competitive services below cost.¹⁵

11 **Q. The ORS did not file substantive rebuttal, but did explain how the SC USF operates**
12 **today. Do you have a comment?**

13 A. Yes. The purpose of this proceeding is to determine whether bundled and contract
14 service offerings *should* qualify for the USF subsidy. As such, how the fund operates
15 today is not determinative of deciding whether such support is appropriate. Nevertheless,
16 the ORS testimony does provide a useful discussion for crafting a remedy to existing
17 practice.

18 The ORS admits that the per-line support today is not tied to the maximum rate or
19 the cost of service. Rather, the per-line support is today an after-the-fact calculation to
20 make sure that the ILECs receive a perpetual revenue stream from an access reduction
21 they implemented in the past. Importantly, this structure – without any link to statutory
22 goals or formula – must be changed to ensure that only eligible lines receive support.

¹⁵ I would note that CenturyLink earlier claimed that competition would keep prices reasonable, so it is unclear why here they claim that they would respond to the elimination of support with higher prices. As the Commission is aware, competitors are not drawing from the SC USF, so there is no reason to assume that competitive conditions would change if the RLECs were to only receive support to keep basic local service prices affordable (as contemplated by the Statute).

1 **Q. How should the Commission conform the operation of the Fund to make it**
2 **consistent with Section 58-9-280 and the Guidelines, Administrative Procedures and**
3 **Order of the Commission implementing the Fund?**

4 **A. The Commission should take a simple step to make sure that support is only provided to**
5 eligible lines, a category that should *not* include bundles, contracts and multi-line
6 business lines. Specifically, the Commission should calculate support using, as its
7 starting point, the per-line support amount corresponding to last support amount approved
8 by the Commission. On an annual basis, the Commission would calculate the amount of
9 subsidy each COLR should receive by multiplying this fixed amount per-line times the
10 number of eligible lines each company reports and then performing the other calculations
11 required under the Administrative Procedures. The cost per-line amount should be held
12 constant until this Commission approves changes as provided in the Guidelines and
13 Administrative Procedures.¹⁶ This simple administrative change would conform the
14 operation of the SC USF to the way that the Commission intended when it adopted, as set
15 forth below:

16
17 Guideline #9 for South Carolina Universal Service Fund¹⁷
18

19 The high cost support component is calculated on a per-line basis for
20 residential and single line business service, then summed over all such
21 lines in the designated state USF support area.
22

23 And,

¹⁶ Order Approving Final Documents and Vacating Order No. 2001-954, Public Service
Commission of South Carolina Docket No. 97-239-C, Order No. 2001-996, October 10, 2001 ("*Final
USF Order*").

¹⁷ *Final USF Order*, Exhibit A, Guidelines for South Carolina Universal Service Fund (USF), at
page 6.

1 South Carolina Universal Service Fund Administrative Procedures
2

3 IV. Distributions from the SC USF to Eligible COLRs
4

- 5 D. COLRs will receive High Cost Support based upon the number
6 of eligible residential and single-line business lines served by
7 such COLR in a Designated Service Area. The amount of High
8 Cost Support is determined by multiplying the number of
9 eligible lines by the per line support available for such lines in
10 the designated support service area.¹⁸
11

12 Importantly, these provisions are already part of the Commission's Orders.

13 Consequently, the administrative clarity I recommend here is needed not to implement
14 new policy as much as it is to conform the fund to its stated purposes and procedures.

15 **Q. Would your recommended reform jeopardize universal service?**

16 A. No. As with the existing procedures, COLRs should be permitted to request additional
17 support, but before the Commission granted any such request, the Commission should
18 determine that the support is needed and would not be used to subsidize competitive
19 services. Only by the Commission taking back the reins of this fund can it assure that its
20 statutory purposes are being achieved.

21 **Q. Does this conclude your surreply testimony?**

22 A. Yes.

¹⁸ *Final USF Order*, Exhibit B, South Carolina Universal Service Fund Administrative Procedures,
at 3.

**BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA**

DOCKET NO. 2009-326-C

IN RE:

State Universal Service Support of Basic
Local Service Included in a Bundled
Service Offering or Contract Offering

CERTIFICATE OF SERVICE

This is to certify that I, Leslie Allen, a legal assistant with the law firm of Robinson, McFadden & Moore, P.C., have this day caused to be served upon the person(s) named below **SOUTH CAROLINA CABLE TELEVISION ASSOCIATION, COMPSOUTH, tw telecom of south carolina, llc, AND NUVOX COMMUNICATIONS INCORPORATED's SURREPLY TESTIMONY OF JOSEPH GILLAN** in the foregoing matter by placing a copy of same in the United States Mail, postage prepaid, in an envelope addressed as follows:

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Dated at Columbia, South Carolina this 13th day of November, 2009.



Leslie Allen